

EXHIBIT H

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 CIVIL ACTION NO. 16-cv-951 (LAK)

4 DANIEL KLEEBERG, et al.,

5 Plaintiffs,

6 v.

7 LESTER EBER, et al.,

8 Defendants.

9 -----x

10
11
12 98 Southeast 7th Street
Suite 1100
13 Miami, Florida
Thursday, May 9, 2019
14 9:35 a.m.- 11:55 a.m.
15
16
17

18 DEPOSITION OF SOUTHERN GLAZER'S WINE & SPIRITS, LLC
19 THROUGH LEE HAGER
20
21

22 Taken before Edward Varkonyi, Registered
23 Merit Reporter and Notary Public for the State of
24 Florida at Large, pursuant to Notice of Taking
25 Deposition filed in the above cause.

APPEARANCES

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on behalf of the Plaintiffs.

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on behalf of Defendants Lester Eber,
Alexbay, LLC f/k/a Lester Eber, LLC
Eber Brothers & Co., Inc., Eber Bros. Wine
and Liquor Corporation, Eber Bros. Wine and
Liquor Metro, Inc., Eber Connecticut, LLC,
and Wendy Eber

JOHN HERBERT, ESQ. (Telephonically)
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on behalf of Defendants Lester Eber and
Wendy Eber

DAVID P. ACKERMAN, ESQ.,
Akerman LLP
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on behalf of the Witness.

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Gumaer

ALSO PRESENT: Alan Greenspan, Esq.,
Executive VP and General Counsel
Southern Glazer's Wine and Spirits

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I N D E X

Witness	Direct	Cross	Red.	Rec.
LEE HAGER	4	78	83	--

E X H I B I T S

Plaintiff's	For Ident.
Exhibit 92 Subpoena	8
Exhibit 93 SGWS-000124 to 138	19
Exhibit 94 EB-00035524 to 43	58
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NOTE: THE ORIGINAL EXHIBITS WERE RETAINED BY MR.
BROOK AND ARE NOT ATTACHED TO THE TRANSCRIPT.

1 Thereupon--

2 LEE HAGER

3 was called as a witness by the Plaintiff and having
4 been first duly sworn responded as follows:

5 THE WITNESS: Yes, I do.

6 DIRECT EXAMINATION

7 BY MR. BROOK:

8 Q. Good morning.

9 A. Good morning.

10 Q. Could you please state your full name.

11 A. Lee F. Hager.

12 Q. And you are aware you're being deposed in
13 the case of Kleeberg versus Lester Eber?

14 A. Yes.

15 Q. And you are here as a corporate
16 representative for Southern Glazer's Wine and Spirits
17 of America, LLC; is that correct?

18 A. Yes.

19 Q. Did I get that name, right?

20 A. Yes.

21 Q. Okay. Is it fair to say that that is
22 a -- that that entity can be referred to herein as
23 just generally Southern, and that would include that
24 entity and also its predecessors and affiliates?

25 A. Yes.

1 Q. Have you ever been deposed before?

2 A. Yes.

3 Q. How many times?

4 A. I would have to say three, four times.

5 Q. When was the last time you were deposed?

6 A. Approximately two years ago.

7 Q. Even though you probably discussed these
8 sorts of things with your lawyers and I don't want to
9 know specific advice or anything that was given
10 there, I'm just going to go over some of the ground
11 rules generally.

12 In this deposition I'm going to be asking
13 you questions and you're going to be answering them
14 under oath. You understand that?

15 A. Yes.

16 Q. And there is a few differences between a
17 deposition and a typical conversation that I want to
18 make sure we remain conscious of.

19 First, the court reporter is trying to
20 transcribe everything that we say and if he doesn't
21 put it in the transcript, it might as well not have
22 been said. So that means it's important for us to
23 try our best not to speak over each other. Do you
24 understand that?

25 A. Yes.

1 Q. So even though you're going to know where
2 my question is going and I may pause or even fumble a
3 little, I would like you to please try to let me
4 finish getting the question out before you start to
5 answer, okay?

6 A. Yes.

7 Q. Another important thing, you're doing a
8 great job so far saying yes, a lot of witnesses will
9 sometimes lapse into uh-huh. That doesn't read well
10 in a transcript so if you say that either the court
11 reporter or I will end up asking you to clarify
12 that.

13 A. Just remind me. It will happen.

14 Q. It always does. Same thing goes for
15 gestures, that's even less transcribable, although
16 some court reporters try, so we will try to clarify
17 that as well.

18 Another thing that's unlike a typical
19 conversation is that when I ask a question I'm
20 entitled to full answers. So if I, for example, ask
21 you what you had for breakfast and you said toast,
22 but you had toast and orange juice and salmon, it
23 would not have been a full answer to just say toast.

24 Do you understand that?

25 A. Yes.

1 Q. There is nothing wrong with asking me to
2 repeat a question or even explain a term if you don't
3 understand it, but if you answer my question, I am
4 going to assume that you understood it, okay?

5 A. Understood.

6 Q. If you need clarification of my question,
7 please look to me for clarification and not to anyone
8 else, okay?

9 A. Yes.

10 Q. You may hear objections from your lawyer
11 or other lawyers from time to time. You should
12 proceed to answer the question if you can do so,
13 okay?

14 A. Understood.

15 Q. Only if your lawyer instructs you not to
16 answer on the grounds of attorney-client privilege,
17 that's a different situation, okay?

18 A. Understood.

19 Q. You are allowed to ask for a break if you
20 need one. The only thing I ask is that if I've asked
21 a question, you go ahead and answer the question
22 before we take our break, okay?

23 A. Yes.

24 Q. Is there any reason such as being under
25 unusual stress, a physical or mental condition or

1 being under the influence of any substances that
2 would prevent or limit you today from giving full and
3 truthful answers to my questions?

4 A. No.

5 Q. Have you ever testified as a corporate
6 representative?

7 A. Yes.

8 Q. When was that?

9 A. Approximately two years ago.

10 Q. Okay. I'm going to start with what is
11 going to be marked as Plaintiff's Exhibit 92.

12 (The document referred to was thereupon
13 marked Plaintiff's Exhibit 92 for Identification, a
14 copy of which is not attached hereto.)

15 BY MR. BROOK:

16 Q. This is a copy of a subpoena and list of
17 deposition topics. Have you seen this before?

18 A. Yes.

19 Q. If you look at the second page, the
20 deposition topics, have you prepared yourself to
21 testify as to all of the listed topics there?

22 A. I believe so, yes.

23 Q. What have you done in terms of
24 preparation for topic 1?

25 A. A lot is based upon my personal knowledge

1 and my involvement in the transaction itself.

2 I have obviously spoken to my counsel to
3 help refresh me on some of these issues. I have
4 also, in preparing for this, spoke to some of the
5 people that remain in our organization who worked
6 most closely with Mr. Eber on a day-to-day basis, as
7 well as with the transaction and generally reviewed a
8 package of documents that were I believe submitted to
9 you as part of this.

10 Q. Who were the individuals that you spoke
11 to that you referred to as working most closely with
12 Lester Eber on a day-to-day basis?

13 A. A gentleman by the name of Larry
14 Goodrich.

15 Q. Anyone else?

16 A. Steven Becker.

17 Q. Anyone else?

18 A. And Wayne Chaplin.

19 Q. Is that it?

20 A. Yes.

21 Q. Were there any other individuals that you
22 spoke with about working with Lester Eber on the
23 transaction?

24 A. No.

25 Q. Did you speak with Harvey Chaplin?

1 A. No.

2 Q. Why not?

3 A. Because I didn't work with Mr. Chaplin on
4 the transaction. Harvey Chaplin on the transaction.

5 Q. I know it's probably disrespectful to
6 refer to them by their first names but just for the
7 sake of clarity let's try to use the first name when
8 referring to one of the Chaplins.

9 A. Mr. Chaplin is Harvey Chaplin. Wayne is
10 Wayne Chaplin.

11 Q. Okay. We can also do it that way.

12 A. Yeah.

13 Q. In terms of looking at any sorts of
14 documents or records, did you also look at any
15 e-mails to prepare?

16 A. No.

17 Q. Why not?

18 A. I did not have any e-mails when I went to
19 search for e-mails. This case is pretty old and way
20 past our document retention policy.

21 Q. By this case, you mean the transaction
22 with Eber in 2007?

23 A. Yes, sir.

24 Q. With respect to topic 2, the work
25 performed by Lester Eber, have you spoken with any

1 individuals other than the three you mentioned to
2 prepare for that testimony?

3 A. No.

4 Q. Was the answer that you gave in terms of
5 preparing for topic 1 the same answer you would give
6 for topics 2, 3 and 4 as well or did you do anything
7 else to prepare for any of the other topics?

8 A. On the payments one, in addition to what
9 I discussed, I did verify with our accounting
10 department about the payments that were made to
11 Mr. Eber.

12 Q. How did you verify with the accounting
13 department?

14 A. It's just a request for payments to a
15 particular vendor.

16 Q. So Lester Eber is a vendor in Southern's
17 system?

18 A. Exactly.

19 Q. So he's not listed as an employee, for
20 example?

21 A. No, a vendor.

22 Q. And how far back to those accounting
23 records go?

24 A. The formal accounting records that I had
25 access to only went back about five or six years in

1 our formal system and the rest could have been on
2 notes within the accounting department, but nothing
3 formalized. Again, this goes back pretty old from
4 retention.

5 Q. Let's go ahead and jump into it. In
6 terms of the discussions between Southern and -- let
7 me step back and give you another definition.

8 When I refer generally to Eber, I'm going
9 to be referring to Lester Eber or any of the Eber
10 companies that were affiliated with him. If there is
11 going to be a more specific entity, I will identify
12 that specific entity, okay?

13 A. Uh-huh.

14 Q. Is that okay?

15 A. Yes.

16 Q. So when was the first communication
17 between Southern and Eber regarding any potential
18 transaction between the two?

19 A. If I remember correctly it dates back to
20 shortly after we entered the state of New York.

21 Q. And what was the nature of that
22 conversation?

23 A. Well, when we entered the state of New
24 York, and I believe that was in '04, I believe it was
25 late in '04, we -- our intention was to become a

1 statewide wholesaler and we had consummated another
2 transaction with another wholesaler by the name of
3 Premier and at that time or shortly after that, you
4 know, our intention was to expand our statewide
5 reach, which was minimal in upstate New York, and
6 that I believe was the first time that we reached out
7 to Mr. Eber or the company to possibly join with us.

8 Q. So you were contacting Eber about
9 possibly acquiring the business?

10 A. Yes.

11 Q. Just so that I'm clear, the transaction
12 that occurred with Premier, was that an acquisition
13 of Premier?

14 A. That was an acquisition, an asset
15 purchase of Premier.

16 Q. In what general area did Premier operate?

17 A. Premier primarily, what was held out to
18 us is they were a statewide operation. Shortly after
19 the acquisition we realized quite clearly that they
20 were metro based. Do you need a definition of that
21 or not?

22 Q. You mean New York metropolitan area?

23 A. Right, they were Metro based and they had
24 a rather weak -- rather weak footprint in upstate New
25 York.

1 Q. Why did you select Eber as the potential
2 contact for upstate New York?

3 A. You know, to us at that time there was
4 what I will say was our -- an archrival competition
5 that was in metro and then we saw the Eber company as
6 the strongest player up there that we can leverage
7 and build our business.

8 Q. And how did Eber or Lester Eber respond
9 when Southern reached out about a potential
10 acquisition?

11 A. Again, what I remember, it wasn't
12 positive, that he was really not interested in it.

13 Q. How far did the discussions go about a
14 potential acquisition?

15 A. I think they were general at that point.
16 I don't believe there was anything formal when you
17 are talking about that period of time.

18 You know, you have to understand the
19 nature of our business. You know, we were up there.
20 We were up there, we were down in metro. We had felt
21 that we understood that market pretty well and at
22 this point the suppliers that we had in metro, there
23 was a lot of alignment with some of the suppliers
24 that Lester had, so there was that natural inertia to
25 align with Eber, Eber Brothers or whatever the

1 organization was, and to expand our business so there
2 was continuity on the supplier base. That's how
3 business works.

4 Q. Did the discussions get to the point of
5 discussing even in general terms any sorts of numbers
6 for what an acquisition might be?

7 A. I do not believe so at that time, no.

8 Q. At a later time did numbers get used for
9 a potential acquisition of Eber Brothers?

10 A. Not until long after.

11 Q. When was the first time when any numbers
12 were used for a potential acquisition?

13 A. The substantive discussion probably took
14 place way over a year after that, after that period
15 of time, sometime in '05, in the beginnings of '05,
16 you know.

17 We had -- we had continued to try to
18 expand and grow the way we know how to grow in the
19 marketplace and, you know, if Mr. Eber or his
20 companies were not going to sell, that wasn't going
21 to deter us from continuing to expand in the State.

22 Q. So what event or events precipitated
23 having more substantive discussions with Eber in
24 2005, other than -- I can give you examples if you're
25 not sure what I'm talking about.

1 A. You're going to have to give me some
2 examples.

3 Q. By that point in time had Southern, for
4 lack of a better way to put it, poached any employees
5 of Eber Brothers?

6 A. I think I take a certain offense to the
7 word poached.

8 Q. Let me rephrase.

9 A. Yeah.

10 Q. Had Southern hired any individuals who
11 had been working for Eber Brothers prior to that
12 point?

13 A. We hired a number of individuals who
14 basically saw the future of what our intentions were
15 to do in the state, invest in the state and how we
16 were going to grow and bring suppliers to the
17 operation.

18 Salespeople by their very nature are
19 like -- in a non-condescending way, rats find the
20 cheese. Salespeople will go where the product is to
21 sell the product to make money, to bring home to
22 their families to feed it and I believe often they
23 are the bellwether of the future and I believe a
24 number of them saw what was going on in metro because
25 our growth was tremendous when we got there with our

1 ways of working.

2 I'm not saying they are the best way of
3 working but we got there with new ideas, new ways of
4 doing business and I think there was a certain
5 excitement that this was a future and we had an
6 overwhelming response to us putting up our flag at
7 that time and people coming to us.

8 Q. And was that an event that precipitated
9 the more substantive discussions with Eber?

10 A. I tell you the truth, I think the
11 substantive discussions --

12 MR. CALIHAN: Objection. Objection as to
13 form.

14 MR. ACKERMAN: You can still answer to
15 the best of your ability.

16 THE WITNESS: Okay. I think in terms of
17 what I'll say is the time line, no, I think the
18 people part, which you had said was an early
19 part of the building -- from my standpoint the
20 building of our business, but those substantive
21 discussions I believe came way after that period
22 of time.

23 BY MR. BROOK:

24 Q. So you mentioned substantive discussions
25 in 2005. What were the general terms discussed then,

1 in terms of what an acquisition deal might look like?

2 A. Well, you know, you skipped a big part,
3 as I remember this.

4 The substantive discussions in '05
5 related to the Delaware and the Ohio acquisitions or
6 mergers into the business -- let's call it
7 acquisitions into our business.

8 Prior to that -- just so we're all on the
9 same page, prior to that the New York operations had
10 already, from my standpoint, ceased to exist.

11 Q. Let's just step back for one second. We
12 might be off on the timing here and that could be the
13 source of confusion.

14 A. Yeah, I'm a little confused.

15 Q. So how long was it between the time when
16 you started talking about acquiring Ohio and Delaware
17 interests and that transaction actually being
18 consummated, a matter of months, weeks?

19 A. It was rapid. I would have to say you
20 could measure it in weeks. Now, if it was six weeks
21 or eight weeks, it happened -- it happened rather
22 quickly. It was the summer of '05, I remember,
23 because it was a lost summer for me. It was the
24 summer of '05 when this transaction all came
25 together. Yeah. '07?

1 Q. Let's look at an exhibit.

2 MR. ACKERMAN: Look at a document.

3 MR. BROOK: Let's mark this as 93.

4 THE WITNESS: Excuse me, it was the
5 summer of '07. Excuse me, summer of '07.

6 MR. BROOK: Let's mark this Exhibit 93.

7 MR. ACKERMAN: You may want to clarify
8 the prior answers.

9 THE WITNESS: Yeah.

10 (The document referred to was thereupon
11 marked Plaintiff's Exhibit 93 for Identification, a
12 copy of which is not attached hereto.)

13 BY MR. BROOK:

14 Q. Do you recognize what has been marked as
15 Exhibit 93?

16 A. Yes.

17 Q. What is it?

18 A. This was our -- what I will say is our
19 initial letter of intent regarding the -- yeah, this
20 is our initial letter of intent regarding the
21 purchase of the New York operation.

22 Q. Okay. So that was -- it's dated March
23 2007, and February 2007, looks like there is a few
24 amendments?

25 A. Yes.

1 Q. Let's jump back in time a little bit to
2 before this.

3 Prior to the discussions that immediately
4 preceded the letter of intent, had there been any
5 substantive discussions about an acquisition of Eber
6 Brothers in either '05 or '06?

7 A. No.

8 Q. So was there only one previous discussion
9 with Lester Eber about a potential acquisition?

10 A. To the best of my knowledge, yes.

11 Q. Who participated in that discussion?

12 A. It would have been myself and Mr. Chaplin
13 at that time. Wayne Chaplin had it. Possibly Harvey
14 Chaplin at the initial one about joining forces with
15 us. I am referring to that early one now in that --
16 right after we entered the state.

17 Q. In that early discussion had it been
18 conveyed to Lester Eber that he would have a
19 continuing role in the business if Eber Brothers was
20 acquired?

21 MR. RAMSEY: Form.

22 THE WITNESS: Excuse me?

23 BY MR. BROOK:

24 Q. Sometimes when a company is acquired the
25 existing management goes, sometimes it stays. During

1 those initial discussions with Lester Eber, was it
2 contemplated by Southern that Lester Eber would
3 continue on in a senior role with the New York
4 operations if Southern acquired Eber Brothers?

5 A. It was never really our intentions for
6 Lester to have a long-term role, and especially that
7 of an employee.

8 We really kind of looked at it as being,
9 you know, we have done this before as a consultant as
10 a transition for our business, you know, ways of
11 working.

12 We did realize very, very early on when
13 we started in New York, we had a fairly good
14 understanding about metro, we thought, and then we
15 had an awful lot to learn about metro and we had very
16 little understanding about the ways of working in
17 upstate New York, which to me should be a different
18 state.

19 It's just a totally different way of
20 working, customer, supplier preference. Everything
21 is just totally different and we realized our initial
22 fore up there and going up there when we did was
23 without knowledgeable source, so we really believed
24 that we needed to have a transition with it. I think
25 it was always anticipated that there would be some

1 sort of consultive role.

2 Q. And in terms of a consulting role, was
3 that meant to be more limited than the role of say
4 someone who was actually managing the operation
5 itself?

6 A. A hundred percent. We already had -- we
7 already moved at kind of great thought and expense
8 what we thought at that time was our future
9 leadership up there, both on the commercial point and
10 operational point but, again, through years of
11 expansion, acquisition, we realized that sending the
12 best minds to a foreign country where they couldn't
13 speak the language was never going to be successful.

14 So the answer to that question is, you
15 know, we had, we thought, the core of the nucleus of
16 the commercial people now in place, but needed to
17 really have some knowledge given to them.

18 Q. So when Southern moved into other states,
19 not counting New York, was it typical business
20 practice to acquire a local distributor?

21 A. I would have to say it's not only
22 Southern's, but it's probably the industry's way of
23 doing it because of the regulations, the laws and
24 whatever.

25 No wholesaler will ever go up and just

1 plant their flag because, you know, a wholesaler owns
2 nothing. They have to have the brands. They have to
3 have the distribution rights. They have to have
4 employees. You very, very rarely go to what people
5 typically say is green field. No, that's a -- that's
6 a very costly and long route to go.

7 Q. And in those typical situations where a
8 local distributor was acquired in a new state, what
9 typically happened to the existing management of
10 those companies that were acquired?

11 A. If we were successful in charming the old
12 owners, which are traditionally family owned, very
13 prideful people, we were successful in getting some
14 sort of transition plan and it varies. You know,
15 some sort of -- like I might say, consulting,
16 advisory, whatever it might want to be. Yes, that
17 would be part of our game plan.

18 Q. Then for more junior employees like
19 salespeople, was it typically your goal to retain
20 them as employees?

21 A. Yeah, quite contrary you want to keep the
22 continuity of the people that are selling and making
23 money for you and it's usually those middle executive
24 managers are the ones that have chances of being
25 either replaced or reorganized. So it's the very,

1 very top and the very, very bottom.

2 Q. You made a gesture there. Were you
3 suggesting that if you kept the middle or higher
4 executive people around, that they might butt heads
5 with Southern management?

6 A. No, my gesture was my figure of speech.
7 I have some European blood in me.

8 Q. I was trying to understand.

9 A. Nothing was not spoken.

10 Q. Okay. Who initially proposed -- when it
11 came to Southern acquiring Eber and its assets, who
12 first proposed that Lester Eber have a consulting
13 role?

14 A. I would very much like to say it was a
15 joint -- for us it was almost like it was a part of
16 our all our deals, as I have said.

17 It wasn't like one person proposed it.
18 It was almost accepted. So as we sit down, as say
19 this executive group, and I would represent mostly
20 organizationally from my point as being secretary of
21 the company in charge of all the back office and all
22 the administration, and then there would be our
23 salespeople or administrative people. It's almost a
24 natural thing, you know, to benefit us.

25 It wasn't one. It was almost like it was

1 our challenge to get -- again, to me it's all
2 business continuity. It's all long term for me,
3 short term/long term.

4 Q. Were the terms of the consulting
5 arrangement negotiated?

6 MR. RAMSEY: Form.

7 THE WITNESS: Am I supposed to answer
8 that?

9 MR. ACKERMAN: Yes.

10 THE WITNESS: As in all of them, they
11 were made as broad as possible for my advantage,
12 you know, giving me the ability to expand or
13 contract as my business was going to progress.

14 You know, no insult to Mr. Eber in this
15 room, to us it was very, very typical to
16 negotiate as broad as you can and then utilize
17 the services and the knowledge as they became
18 needed.

19 BY MR. BROOK:

20 Q. How was the amount of the consulting fee
21 determined?

22 A. Again, from experience for what we had
23 expected, to -- again, being way now in advance and
24 being up there now a couple of years before, two,
25 three years from '04 to this period of '07 when the

1 consulting agreement was actually done, we had
2 learned a lot, but probably from my standpoint, being
3 critical like I am, we learned so much that we did
4 not know that, you know, from my standpoint, you
5 know, I just saw this agreement replacing other sort
6 of consultants that I would have had to hire, be them
7 operational consultants, be them industry
8 consultants, be them lobbyists in their things.

9 This is one of the things that maybe
10 doing these transactions I saw Lester, Mr. Eber, as
11 almost like a one stop shop of knowledge of a lot of
12 different things that I was going to have to
13 purchase, you know, in the marketplace.

14 It was -- again, we thought it was fair
15 and we thought it was arm's length and we thought it
16 was equitable from our standpoint. We would have
17 spent a lot more trying to buy these services some
18 other place.

19 Q. And who was negotiating the consulting
20 agreement on behalf of Lester Eber? Was it just him
21 or did he have someone else negotiating for him?

22 MR. RAMSEY: Form.

23 THE WITNESS: I don't remember. I don't
24 really remember. I know that they had a very
25 large law firm.

1 Any discussions about any of the work
2 product that came out of that -- I'm sure Lester
3 had the right attorneys working with him. Any
4 discussions about things -- you know, like any
5 sort of consulting agreement, we pushed what we
6 wanted and they pushed back.

7 I don't really think it was Lester
8 pushing back but his attorneys. I'm sure he had
9 counsel.

10 BY MR. BROOK:

11 Q. Does the name Harris Beach ring a bell?

12 A. Yeah, they were pretty good. Yeah.
13 Harris Beach, yeah.

14 Q. I want to ask you a couple of questions
15 about this Exhibit 93. Do you have that in front of
16 you still?

17 A. Yes.

18 Q. If you could, please, turn to the page
19 that has the Bates number in the bottom right ending
20 in 130. It's about halfway in.

21 A. Okay.

22 Q. Are you there?

23 A. 130, yes, sir.

24 Q. There section 2 specifies a purchase
25 price for the assets. Do you see that?

1 A. Uh-huh.

2 Q. That's a yes?

3 A. Yes. Excuse me.

4 Q. And it refers to in the first item
5 purchasing the value of the inventory. Do you see
6 that?

7 A. Yes, sir.

8 Q. Not necessarily specific to this letter
9 of intent, but do you know was the inventory of Eber
10 Brothers ultimately acquired by Southern?

11 A. Yes.

12 Q. Was all the inventory acquired by
13 Southern or was some of it not able to be agreed upon
14 as to the amount of the price?

15 A. I would have to say substantially all of
16 the inventory. We would not have bought things we
17 didn't feel we can represent. We would not have
18 bought unsaleable or unmarketable merchandise and we
19 wouldn't have bought oddball things that we would
20 have to just write down or write off. So we would
21 have bought saleable, marketable merchandise.

22 Q. Do you recall there being any oddball
23 things that couldn't be bought?

24 A. There always is. There always is but I
25 don't recollect. It would be a de minimis amount in

1 any wholesaler's operation.

2 Q. And the third item under 2, it says \$10
3 million for the intangible assets that have been
4 listed and I think it's on the preceding page.

5 Was that amount ultimately paid or was
6 that amount changed?

7 A. I believe that amount was ultimately
8 changed. I believe that was like a placeholder as
9 this -- as this transaction evolved from amendment to
10 amendment to amendment. So I would have to say at
11 this point it was a placeholder.

12 Q. How was that amount changed? Did it go
13 up or down?

14 A. I can't tell you now exactly.

15 Q. Please turn to the next page.

16 A. Uh-huh.

17 Q. It says in the first full paragraph
18 there: "At closing Southern shall pay Eber in cash
19 the purchase price less, (i), an amount to be
20 allocated to the restrictive covenants."

21 Do you see that?

22 A. Uh-huh.

23 Q. What was the amount being referred to
24 there?

25 A. I don't specifically recollect what

1 amount that was.

2 Q. Is it typical to enter into restrictive
3 covenants with companies when you are acquiring their
4 assets?

5 A. Absolutely.

6 Q. If you look at, I believe it's the next
7 page, section 5.

8 It says "Eber, you", and I will note for
9 the record that this letter is addressed to Lester
10 Eber.

11 It says: "Eber, you, and each of the
12 current shareholders, owners and affiliates of both
13 EBWLC and Eber NDC will enter into restrictive
14 covenants." Do you see that?

15 A. Yes.

16 Q. Do you know why -- let me start back.
17 Was this requirement for numerous restrictive
18 covenants, including one with EBWLC, is something
19 that remained part of the deal or was changed before
20 it was ultimately finalized?

21 A. I believe there were restrictive
22 covenants right through all the transactions,
23 including the -- the consulting agreement I believe
24 also had a restrictive covenant in it.

25 You know, when we were coming in and

1 paying substantial amounts of a money to a business,
2 for a business we want to make sure that this
3 business and the key people don't resurrect
4 themselves and start competing with us.

5 Q. It is fair to say you understand that
6 EBWLC, Eber Brothers Wine and Liquor Corporation, was
7 the parent company that had a number of affiliates,
8 including an entity that operated in the metro area
9 and interests in Ohio and Delaware?

10 A. I never had a full understanding of the
11 full organizational structure, so I can't say yes to
12 that question.

13 I know that they were all interrelated.
14 I had no idea of what the ownership was of each of
15 them or if they were individually owned or owned
16 separately.

17 Q. Do you know why no restrictive covenant
18 was ultimately entered into between EBWLC and
19 Southern?

20 A. I have no idea, but I would like to
21 clarify that. I have no idea if there really was one
22 or the there wasn't one entered into.

23 Q. So if there was one not entered into you
24 don't know why that wouldn't be the case?

25 A. Absolutely not, no.

1 Q. Can you think of any reason why Southern
2 would have agreed not to impose a restrictive
3 covenant on EBWLC or other Eber entities?

4 MR. CALIHAN: Objection to form.

5 MR. RAMSEY: Form.

6 THE WITNESS: I would have no idea.

7 BY MR. BROOK:

8 Q. Why did you want to have a restrictive
9 covenant with Lester Eber specifically?

10 A. Well, again, as we learned a lot we
11 learned that the -- we made the right decision, first
12 of all, by trying to make a deal with Lester and the
13 Eber companies because their reputation really did
14 precede itself and had created this business image
15 that was counter to what I will say the other
16 competition was, the big competition, our
17 competition.

18 So if you use that as the foundation and
19 again, we have learned now, we were there for a few
20 years, we said we don't want this guy or any of his
21 companies in any format coming back and competing
22 with us.

23 Q. Turning to section 6, that describes how
24 Lester Eber will enter into a consulting agreement.
25 Do you see that?

1 A. Uh-huh.

2 Q. That's a yes?

3 A. Yes. Excuse me.

4 Q. And it says in item B the annual
5 compensation will be \$500,000. Do you see that?

6 A. Yes.

7 Q. How was that amount determined?

8 A. The same -- I'll repeat the same answer.
9 We're into this state -- we're in this state now
10 since '04, very weak still in upstate, many needs and
11 we truly assessed what we would have to spend for
12 these resources and knowledge that, you know, we
13 valued. We valued in entering an agreement with
14 Lester.

15 Q. Was the amount of compensation ultimately
16 agreed to be paid to Lester Eber higher than the
17 \$500,000 reflected in this letter of intent?

18 A. Yes.

19 Q. Why did the amount increase?

20 A. You know, that's an excellent question
21 and I think the answer is is that when this part of
22 the transaction was first envisioned, this was kind
23 of like a New York-centric part of the deal, you
24 know.

25 As it evolved -- as it really evolved, it

1 became a much larger deal, so I believe the
2 consulting here of \$500,000 was really before it
3 evolved into buying the other operations in Ohio and
4 Delaware and we had fully, fully expected to and
5 assumed that we would have to be using Lester on a
6 broader scale as it came.

7 So I believe the \$500,000 in the final
8 iteration of this went to a number like \$600,000 and
9 we believe we got the best -- from the business
10 standpoint, it wasn't New York-centric. Now we had
11 other states that we were going to use Lester in.

12 Q. And did Lester ultimately provide
13 consulting services outside of New York?

14 A. On a limited basis. On a limited basis
15 in a transition role.

16 Q. For approximately how long did he provide
17 consulting services outside of New York?

18 A. I would have to say -- I don't really
19 recollect because we -- the structure of each of his
20 other deals like this -- we had like, for instance,
21 Postiy in Ohio. We kind of relied on what we found
22 when we got there, is knowing what you don't know.

23 We found when we got there they had a
24 relatively good management group there so we didn't
25 really have to rely as much on Lester because it's

1 simplicity of the business also, mostly a brokerage
2 business and in Delaware one of Lester's partners,
3 again, very smart from our standpoint, eventually and
4 still to this date is our landlord, you know, of the
5 building, a gentleman by the name of Ed Stegmeir.

6 Having that continuity of Lester Eber in
7 our stable of consultants having his partner --
8 ex-partner in the marketplace just made for a good
9 transition.

10 Q. Did Southern retain Ed Stegmeir?

11 A. No, I don't believe -- maybe for a short
12 period. I don't really remember. Again, he's our
13 landlord.

14 Q. And he wants you to be able to pay the
15 rent?

16 A. He wants us to be able to pay the rent,
17 in a terrible building.

18 Q. He won't see that.

19 A. On a triple net lease. Yeah, please
20 don't let him see that.

21 Q. With respect to Lester Eber, why did you
22 believe that he was qualified to provide the
23 consulting work that you needed?

24 A. Well, some of it was some instinct. Some
25 of what we learned -- you ask me good questions, by

1 the way.

2 Some of it is what we learned after we
3 bought the business and when we were fortunate enough
4 to get some of the key middle management people and
5 senior people into our organization, we quickly
6 figured out that they were sheerly commercial
7 people.

8 They had absolutely -- they kind of
9 understood the inside of the New York business really
10 pretty well, which is important, don't get me wrong,
11 but they had no knowledge of the outside part of the
12 business, what I will call the operational part for
13 us which is very, very, very important, because we're
14 such a heavily regulated industry and we do nothing
15 without somebody yelling at us or fining us.

16 You know, they had no knowledge, the
17 salespeople we hired, so we had this gap of
18 institutional upstate New York knowledge that covered
19 everything from people to operations, to ways of
20 working, to legislative affairs to -- you know, there
21 is this group called the SLA, I call them something
22 else, which is the State Liquor Authority, which
23 heavily regulates us.

24 That in itself is -- the old statement
25 dealing with city hall, it's ten times worse. They

1 had no knowledge and we were -- we were under -- I
2 don't want to say under attack, but we needed that
3 knowledge. I would have to say we recognized the
4 value of our bargain after we bargained.

5 Q. So at some point after the initial
6 bargaining was it specifically added to the
7 consulting relationship that Lester Eber would act on
8 interfacing with governmental affairs?

9 A. Again, if I remember correctly we made
10 that consulting agreement as broad as we could and
11 then we threaded the needle as many times as we can
12 in terms of expanding it.

13 Q. Was Southern expecting Lester to continue
14 doing work that was essentially the same kind of work
15 he had been doing when he had been in charge of Eber
16 Brothers?

17 A. I don't know. I can only assume the work
18 that he did when he was in Eber Brothers. I can't
19 really answer that.

20 I know what our intentions were for
21 Lester, you know.

22 Q. So is it fair to say that you wanted
23 Lester to use the experience and skill that he had
24 acquired through Eber Brothers to help Southern?

25 MR. RAMSEY: Form.

1 THE WITNESS: Well, I'm going to answer
2 it this way. We didn't want Lester to interfere
3 in our brand building and our selling ways.

4 We had far surpassed what Eber had done
5 in terms of what I will call marketplace sort of
6 things, sort of actions.

7 We utilized Lester for those issues that
8 were out of market, let's say, not necessarily
9 the business of the business of going into a
10 customer and selling them a bottle and have the
11 customer pay. We know how to do that. We know
12 how to do that really pretty well. It was all
13 the things, the environment that we did our
14 business in.

15 BY MR. BROOK:

16 Q. When it comes to having evaluated Lester
17 Eber and his qualifications to serve as a consultant,
18 were you made aware of the Eliot Spitzer
19 investigation into Eber Brothers and other
20 distributors that had occurred?

21 A. Absolutely.

22 Q. And what had been disclosed to you about
23 what Lester Eber and his company had been doing that
24 was being investigated?

25 A. I'm going to look at my counsel because

1 we were also part of that investigation. Every
2 wholesaler was part of that investigation.

3 For those of us who are old enough to
4 know Mr. Spitzer, he did not discriminate. He went
5 after an industry, he did not go after an individual
6 and we were involved in it and I am not really
7 prepared to talk about that, those days.

8 MR. ACKERMAN: Just stick with the
9 question on what you knew about Mr. Eber's.

10 BY MR. BROOK:

11 Q. I'm just staying focused on Mr. Eber.

12 A. Specifically I knew nothing about it. I
13 was dealing with Mr. Spitzer myself.

14 Q. So did Lester Eber disclose to Southern
15 that he had, in fact, authorized kickbacks?

16 MR. RAMSEY: Form.

17 THE WITNESS: To my knowledge, no. I
18 think every wholesaler was dealing with
19 Mr. Spitzer and their own issues.

20 It's Spitzer still alive?

21 MR. RAMSEY: He's alive. I'm not sure
22 where he is, but he's alive.

23 BY MR. BROOK:

24 Q. So many jokes, so inappropriate for the
25 transcript.

1 A. Get it out.

2 Q. Have Lester Eber's responsibilities as a
3 consultant changed since the beginning in 2007 and
4 2008?

5 A. I would have -- what are the dates
6 again?

7 Q. At the beginning, in 2007/2008, what were
8 Lester Eber's day-to-day responsibilities for
9 Southern?

10 A. I guess, you know, I would describe it,
11 and I will go into as much detail as you want, in the
12 early days they were very broad, covered a lot of
13 different topics.

14 Now they're narrower but much deeper as
15 we matured as an organization and our needs became a
16 lot more finite. In the early days, and this comes
17 from my firsthand knowledge and my dealing with it,
18 it was everything from where our facility should be
19 placed, what do you know about this union workforce,
20 you know, what about the trading practices.

21 It was wide ranging in the beginning
22 because, as I described, the Eber personnel we hired
23 were salespeople, so I had no context on the
24 operations and the culture of upstate New York and I
25 relied tremendously on what I saw as a neutral source

1 to give me some advice.

2 So you go from the spectrum what I
3 describe as wide from hey, Lester, where do you
4 believe we should put our warehouse? Now, I went to
5 school in Buffalo, okay, so I know upstate New York
6 but I don't know upstate New York.

7 I loved it up there but I know that
8 Lester lived in Rochester, which I think is a little
9 bit east of Buffalo, if I remember correctly, but we
10 knew we had to close all the warehouses and have one
11 warehouse in the state and I basically -- I was going
12 to make my own decision, hey, Lester where do you
13 think we should put our pinpoint, so that's a good
14 example of a broad thing, but then let's get into the
15 wider thing.

16 I think what we were also seeing -- and
17 you raised the thing about Spitzer and regulations.
18 I think we found ourselves as a tremendous deficit,
19 both in Metro and upstate New York, in terms of what
20 I will call our legislative strength, our knowledge
21 of the politics of New York.

22 We do pretty well in Florida. We do
23 pretty well in Texas. In upstate New York, it's a
24 different world up there. It's like one union leader
25 said to me, I don't care what you do, this is New

1 York, we do it New York way, and that was the context
2 of everything that we tried to do in New York.

3 So I think an area that I personally
4 underestimated, but had really become the focal point
5 of what Lester does, forget the operations now, we
6 understand it. Forget about the people. Forget
7 about labor. I'm on top of that. I feel pretty good
8 that we're really pretty good.

9 But what's gotten very deep, what hasn't
10 changed is the government affairs, it's the SLA
11 regulatory environment that's politically charged and
12 you cannot handicap, you know.

13 I think those are really two, and I
14 believe that there is a point that no one
15 anticipated. We have tried to pivot ourselves in a
16 very socially responsible way and in effect used a
17 lot of our business arguments to have Lester try to
18 frame in the social consequence of the alcoholic
19 beverage industry in Albany.

20 It's really now in that venue of
21 government affairs, lobbying, SLA regulatory that
22 Lester provides our organization the value. All that
23 other stuff we're running our business.

24 Q. So was it your understanding that Lester
25 Eber had experience in dealing with some of these

1 legislative matters?

2 A. Oh, absolutely. Absolutely.

3 Q. And he had that experience from his role
4 running the Eber Brothers company, correct?

5 A. Again, I don't know what he specifically
6 did when he ran the Eber companies in each of the
7 states. I don't, but it became very evident to our
8 people -- we're pretty experienced.

9 We didn't turn Lester loose without
10 watching Lester. Even though we have other lobbyists
11 and we have other people, you know, we began to see
12 when Lester walked the halls of Albany, it wasn't
13 Mr. Eber, it was Lester.

14 You know, again, we're pretty
15 sophisticated that the relationships drive good
16 business decisions.

17 Q. Was there a particular reason why the
18 consulting agreement was entered into with Lester
19 Eber personally rather than with Eber Brothers, the
20 company?

21 MR. RAMSEY: Form.

22 THE WITNESS: I can only answer that as
23 that it's a hundred percent typical that we
24 enter these things, you know, on what I will
25 describe as an individual and personal contract

1 basis.

2 If God forbid something happened to one
3 of our consultants, why would I want to be bound
4 to a corporation for consulting? These are
5 personal services. God forbid something
6 happens, again, to any one of these consultants,
7 their value is diminished.

8 No, I would never enter -- again, these
9 are personal services.

10 BY MR. BROOK:

11 Q. You were aware when you entered into the
12 consulting agreement with Lester, that Lester was
13 going to continue to manage a wine and liquor
14 distributorship in Connecticut and Rhode Island
15 potentially too, correct?

16 A. Well, the answer is we passed on the
17 ability to buy those operations. We assessed the
18 value to our organization, so we passed on it and I
19 don't think -- by having the right to buy it and
20 passing on it, it was our assumption he was going to
21 continue it and, to be very honest, I have no idea
22 what went on in Connecticut right now, we're not in
23 Rhode Island right now, we never saw it as a creed to
24 our business. I don't even know if he has a business
25 there.

1 Q. Was it typical for -- you mentioned other
2 consulting agreements, those are personal contracts.

3 Can you think of any other instance where
4 there was a consulting contract with someone who was
5 a former executive of a company that Southern
6 acquired and that person continued to manage a wine
7 and liquor distributorship?

8 MR. RAMSEY: Form.

9 THE WITNESS: I have no recollection of
10 that. I really don't.

11 BY MR. BROOK:

12 Q. Is it fair to say that at least on
13 Southern's part -- I don't want to know what advice
14 was given, if there was any, but there was no
15 question raised about whether it would be legal for
16 Lester Eber to receive consulting payments directly
17 from Southern while continuing to be a manager of a
18 wine and liquor distributorship?

19 MR. RAMSEY: Form.

20 THE WITNESS: That's kind of like more of
21 a legal. I would imagine that as long there is
22 not a conflict of interest or conflict of duty
23 in his consulting that we would not have a
24 problem. There are a lot of consultants that
25 have a lot of other clients.

1 We were more focused on the business of
2 originally Ohio, Delaware and New York and that
3 would have been our focus. If he had other
4 relationships unrelated to us --

5 BY MR. BROOK:

6 Q. So when you say conflict of interest, you
7 are referring to interests or duties with respect to
8 Southern, right?

9 You weren't concerned about whether he
10 would be breaching a duty to this other company?

11 A. I wouldn't know.

12 MR. RAMSEY: Form.

13 THE WITNESS: I wouldn't know.

14 BY MR. BROOK:

15 Q. I was just trying to clarify.

16 A. No, that's where I was going. I would
17 not know.

18 MR. RAMSEY: Brian, is this a good spot
19 to take two minutes?

20 MR. BROOK: Sure, we can do that.

21 (Thereupon a brief recess was taken,
22 after which the following proceedings were had.)

23 BY MR. BROOK:

24 Q. I want to return to still looking at
25 Exhibit 93, same page. The provisions regarding the

1 consulting agreement, Section D, I want to look at
2 the last line there.

3 It says: "Southern will have the right
4 to reduce or eliminate your duties, so long as full
5 payment described in 6(B) is made during the term."
6 Do you see that?

7 A. Uh-huh.

8 Q. Is that yes?

9 A. Yes.

10 Q. Why was that provision part of this
11 agreement?

12 MR. ACKERMAN: Let me give you an
13 instruction. If that question calls upon you to
14 divulge the content of communications with
15 counsel, then I ask you to leave that out of
16 your answer.

17 If you can otherwise answer that based
18 upon discussions with Mr. Eber or your own
19 thinking, you can answer that.

20 THE WITNESS: Understood.

21 MR. ACKERMAN: Thanks.

22 THE WITNESS: Understood. I believe I
23 answered that previously, it gave us full
24 control of what we wanted Lester to do or not in
25 terms of our business.

1 We had really -- at this point, you know,
2 it was dating. There was nothing there, so we
3 wanted to have the ability as we ramped up our
4 own people or our own capabilities to say okay,
5 we don't need you to do this now. It was
6 control for me of the relationship.

7 BY MR. BROOK:

8 Q. So is it typical to have in these sorts
9 of acquisition situations a consulting agreement
10 where the consulting fee may be paid even though no
11 services are being rendered?

12 MR. RAMSEY: Form.

13 THE WITNESS: It was never our intention
14 for doing it that way. Ours was to control the
15 relationship. We always envisioned a set or
16 subset, of when I describe wide versus narrow
17 and deep, that's what we -- eventually
18 happened.

19 I don't know if we ordained it that way
20 or we just believed it but we thought the
21 relationship would continue and evolve. We
22 wanted to have control of it.

23 BY MR. BROOK:

24 Q. So the initial contract with Lester Eber
25 was for a five year period, correct?

1 A. Yes.

2 Q. Then it also locked him up in terms of
3 the restrictive covenant for another five years after
4 that, correct?

5 A. Yes.

6 Q. After the initial five year period did
7 Southern enter into new consulting agreements with
8 Lester Eber so he would be paid more money after that
9 point?

10 A. We negotiated with Lester. This initial
11 agreement, I believe this five year period ended in
12 2012. Yeah, from '07 to '12. Yes, we entered
13 negotiations with Lester and, again, I remember them
14 and we narrowed his responsibilities and we cut his
15 consultive pay down significantly.

16 Q. What was the amount of pay that you
17 agreed on in 2012?

18 A. I believe it was -- we cut him back 50
19 percent. I believe it went from a monthly of 50 on
20 the first agreement from the '07 to the '12 agreement
21 from 50, to 25 going forward.

22 Q. Just so we're sure we're clear on the
23 record here, I'm going to show you what was
24 previously marked as Plaintiff's Exhibit 27.

25 A. Uh-huh.

1 Q. I have a few copies here.

2 MR. ACKERMAN: Thank you.

3 BY MR. BROOK:

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. Is this the consulting agreement that was
7 entered into in 2007 with Lester Eber?

8 A. Yes.

9 Q. When the consulting agreement was
10 renegotiated in 2012 was there any similar such
11 documentation prepared at that time?

12 A. At this point -- at this point we decided
13 it was better that it was a totally at will
14 agreement.

15 You know, again, for us it was to have
16 what we thought was control of the relationship. We
17 understood that he is still bound by the covenant
18 that he had, as long as it was mutually satisfactory
19 to us.

20 I know Mr. Eber is in the room so it's
21 little uncomfortable but we had already started to
22 build some resources to plan for the transition, you
23 know, of certain of the responsibilities, some work,
24 some hadn't worked. We wanted to have greater
25 control and not be bound long term by anything.

1 Q. Is that consulting relationship
2 continuing today?

3 A. Yes.

4 Q. Is it at the same amount of \$300,000 a
5 year?

6 A. Yes.

7 Q. And the restrictive covenant ended in
8 2017; is that correct?

9 A. It would have been -- yeah. Yes.

10 Q. So you have not sought to renew that
11 restrictive covenant?

12 A. No.

13 Q. Why not?

14 A. We're fully established. We believe that
15 any threat that we could have with Lester joining a
16 competition right now is negligible.

17 Again, we're fully established and
18 running our commercial business up there.

19 Q. You're aware that the consulting
20 agreement required up to 40 hours a week from Lester
21 Eber, correct?

22 A. Yes.

23 Q. Do you know how many hours a week on
24 average Lester Eber put in for Southern during the
25 initial five year period of the consulting

1 relationship?

2 A. No.

3 Q. Do you have any sense of what that number
4 might be ballpark?

5 A. I would just be speculating. I would
6 think some weeks it could be more, some weeks it
7 could be less. It was on call, on duty.

8 Q. Were there some weeks when there was no
9 work being done by Lester?

10 MR. RAMSEY: Form.

11 THE WITNESS: I could not say that. I
12 can't say that.

13 BY MR. BROOK:

14 Q. Who was involved in being the primary
15 interface with Lester Eber for his consulting duties?

16 A. On two levels I mentioned both names. On
17 a day-to-day level it would have been our general
18 manager, a gentleman who I mentioned, Mr. Larry
19 Goodrich. He was the primary leader of the
20 day-to-day of our entire New York State operation,
21 one of the people that I did speak to that I had
22 mentioned, and he would have worked very, very
23 closely with Lester in the early days of this -- of
24 the transaction moving right now almost until current
25 as -- as Mr. Goodrich's responsibilities are just

1 recently transitioning there will be another group of
2 leaders.

3 Q. Now, Lester Eber was given the role of
4 senior vice president or the title of senior vice
5 president, correct?

6 A. Uh-huh. Yes.

7 Q. Why was that?

8 A. More of a -- first of all, I've never
9 seen him use this title. I think it was more of a --
10 how can I describe it? More of an ego introduction
11 sort of moniker for Lester to have.

12 Q. So was it in part so that he could wear
13 the hat of being an agent of Southern when he
14 interacted with third parties?

15 A. I think to the contrary. I think the
16 world knows Lester as a registered lobbyist and, you
17 know, I think that independence to us works to our
18 advantage.

19 I do believe, as I said, I don't ever
20 remember seeing Lester using that title. You know, I
21 can't really remember how it evolved from the
22 agreement or if it's actually really in place.

23 Q. As part of the consulting agreement
24 Lester Eber was entitled to reimbursement for
25 expenses, correct?

1 A. Yes.

2 Q. How were those expenses approved?

3 A. Lester's expenses were scrutinized
4 obviously, like all of them. They would have been
5 formally submitted to -- in the accountable chain,
6 which would be his local management, which was New
7 York, through an approval process, and paid through
8 our normal accounts payable like a vendor.

9 So there would have been a submission,
10 there would have been an expense report, there would
11 have been an approval and to me sitting a few
12 thousand miles away, there would have been an
13 internal audit that would have governed it to make
14 sure these are proper and being done correctly.

15 But the first line of defense is going to
16 be submission, approval at a local level.

17 Q. What were the nature of the expenses
18 being incurred by Lester in his consulting work?

19 A. Again, for the sake of maybe insulting
20 the frugality of Lester is huge in many ways, but
21 there would be all hotel, what I will call travel and
22 entertainment. Those are the buckets.

23 It's his -- it's his doing our work for
24 us in terms of meeting the people and conveying what
25 we need to do. I would think typically what somebody

1 does who does government affairs, they are mostly --
2 as you look at it, they fall into those three
3 buckets. I would say 99 percent travel --
4 entertainment and travel by Lester is a train most of
5 the time or something from the airport back and
6 forth. And hotels, trust me, are reasonable. And
7 entertainment are -- you will see a lot of them up in
8 Albany, which we look. We're very kind of concerned
9 of where money is being spent.

10 Q. And on average in a typical year how much
11 money was Lester Eber being reimbursed for expenses
12 by Southern?

13 A. I never really studied that because to me
14 it was -- to me it was more of a hygiene issue, you
15 know, were there expenses being -- just like the
16 consultant fee, was the consultant fee being paid by
17 the agreement at my level in the organization and
18 were reimbursed expenses being approved as submitted
19 and whatever through the chain of command. I would
20 just be speculating. I think it would be unfair for
21 me to say that.

22 Q. Do you have a ballpark sense of what --
23 in any even year, what the amount of expenses might
24 be?

25 MR. RAMSEY: Form.

1 THE WITNESS: Again, I would just be
2 totally speculating.

3 BY MR. BROOK:

4 Q. More than \$10,000 a year?

5 A. Again, I would assume it would be, you
6 know, if he goes to down to metro to meet with Larry
7 Goodrich. Now, Larry Goodrich is based in metro, in
8 Manhattan. You could stay in Manhattan for one hour
9 and it could cost you \$1,000. I don't mean it as a
10 joke, but it's a stupid place to go to stay in a
11 hotel.

12 Q. It's a dumber place to live.

13 A. Oh, sorry. No, no. And to dine there
14 and whatever, I don't want to do it. It would be
15 speculating.

16 I'm sure we could look into it but I
17 would think it has to be in excess -- you know, that
18 would be very, very reasonable. My point is it's in
19 the approval and the payment and the audit process
20 that they were reasonable and customary for what
21 Lester was doing.

22 Q. To your knowledge have the amount of
23 expenses reimbursed to Lester Eber ever exceeded
24 \$100,000 in a year?

25 A. Again, I would just be speculating. I

1 don't get into it. I say it could be possible.

2 Q. So that's not surprising?

3 A. It really could be possible depending on
4 the urgency, the advocacy.

5 If there is a bill coming through or one
6 that is being presented, I would say to Lester get
7 out of Rochester and go walk the halls, knock the
8 doors, call on whoever you can or sometimes kick my
9 people in the butt and get them riled up about it.

10 If we have a -- one of the functions that
11 I discussed with you was the SLA regulatory sort of
12 thing. It's not if, but when we have charges in an
13 investigation, I know that we go full force into
14 understanding it, what our options are, whatever and,
15 you know, Lester is part of -- today is part of that
16 team who really analyzes it. So there isn't one set
17 of things.

18 Q. Do you recall anything in particular in
19 2018 involving a significant amount of consulting
20 work by Lester Eber?

21 MR. RAMSEY: Form.

22 THE WITNESS: No, I don't. I don't.

23 BY MR. BROOK:

24 Q. I'm going to show you a new exhibit.
25 We'll mark this as 94.

1 (The document referred to was thereupon
2 marked Plaintiff's Exhibit 94 for Identification, a
3 copy of which is not attached hereto.)

4 BY MR. BROOK:

5 Q. This is a document bearing Bates numbers
6 EB35524 through 43, produced by the Eber defendants
7 in this case.

8 A. Uh-huh.

9 Q. Do you recognize what these pages are?

10 A. These are just screen captures of the
11 check total.

12 Q. So they don't show specifically what
13 expenses are being reimbursed, but they do reflect
14 expense reports?

15 A. They reflect an accounting coding of
16 certain expenses. Go from the top to the bottom, you
17 know, obviously we had the payee, you know. It's the
18 accounting coding of all this.

19 Q. I'm just trying to see if I understand
20 these forms. There is an invoice date; do you see
21 that?

22 A. Uh-huh.

23 Q. That's the date of an invoice that was
24 submitted by Lester Eber?

25 A. Yes.

1 Q. Then there is invoice number and it says
2 Eber/LE -- I'm just looking at the first
3 page -- 10/21/17; do you see that?

4 A. Uh-huh.

5 Q. Do you know what that's referring to?

6 A. I can just -- I would just be assuming
7 without having the underlying document that it's, you
8 know, his latest expense report through that period
9 of time.

10 That would be an assumption without
11 seeing it.

12 Q. Then the next category, in the
13 description it refers to on the second line expense
14 report W/E 12/17/2017. Do you know what the W/E
15 refers to?

16 A. No, to tell you the truth I really don't,
17 other than it could be the week ending, if he does
18 weekly expense reports or not or he does monthly. I
19 have no idea.

20 Q. I'm not going to go through this whole
21 thing but I will represent to you that excluding
22 payments for lobbying services and consulting, that
23 the total number of expenses paid in 2018 according
24 to these documents were \$118,371.21.

25 Having heard that can you now think of

1 any reason why Lester Eber incurred so many expenses
2 in 2018?

3 MR. RAMSEY: Form.

4 THE WITNESS: Again, I think I answered
5 that I didn't think it was unreasonable that he
6 could incur that amount, but without the detail
7 behind it to see how many hotels, how many air
8 or trains he takes or dinners he has, it would
9 be all speculative for me to answer this.

10 BY MR. BROOK:

11 Q. Do you know whether Southern retains
12 copies of the invoices that have been submitted by
13 Lester Eber for payment?

14 A. For a period of time, yes.

15 Q. For how long?

16 A. I believe it's five or seven years,
17 depending upon what the IRS requirements are and
18 whether we're under audit or review.

19 Q. I'm going to show another document that's
20 been previously marked. This is Exhibit 29. This is
21 a compilation of letters on Lester Eber's letterhead
22 addressed to someone named Steven Becker.

23 Do you remember that name?

24 A. Yes, I believe earlier on I had answered
25 that in relationship to preparing for today I did

1 speak to Mr. Becker, Steven Becker.

2 Q. Do you recognize these documents?

3 A. No, I have never seen these documents.

4 Q. Let's look at just the first one here.

5 It's dated January 1st, 2012 and it states: "Dear
6 Mr. Becker, this letter will confirm our agreement
7 whereby Lester Eber will provide representation to
8 Southern Wine and Spirits of America, Inc. before the
9 legislative, executive and administrative branches of
10 New York State government for a one year period
11 effective January 1, 2012 until December 31, 2012.
12 The fee for these services will be \$10,000."

13 Do you see that?

14 A. Yes.

15 Q. So even though you haven't seen this
16 document, were you aware of this agreement?

17 A. I believe that this is in conjunction
18 with Lester being a registered lobbyist for us and
19 fees having to be disclosed for that purpose of what
20 he's doing.

21 On your Exhibit 94 that you asked me
22 earlier, I believe that that same amount appears. I
23 saw that number.

24 Q. It does.

25 A. Yeah, that same amount. So yes, I

1 believe that's the lobbying services fee that is paid
2 to Lester, yes.

3 Q. So when did Lester first become a
4 lobbyist for Southern?

5 A. I believe that it was somewhere when --
6 again -- let me answer by just saying I am not
7 certain, but I believe it really came at this period
8 of time when he started to be without -- you know,
9 underneath the initial agreement, on the second one
10 and not necessarily -- but underneath the new
11 agreement.

12 So I would have to say it probably is
13 around this period of time, but I would be
14 speculating.

15 Q. And so this \$10,000 fee is paid in
16 addition to the \$300,000 consulting fee, correct?

17 A. Yes.

18 Q. And how were those amounts determined, in
19 terms of the proportion for one versus the other?

20 A. I'm not really certain. I'm not really
21 certain. I don't know but I have seen that amount as
22 a disclosed amount to the State of New York as a
23 lobbyist fee too, so it was a -- I have no idea. I
24 have no idea how that one was ascertained.

25 Q. Has the State of New York been informed

1 that Lester Eber is also receiving a consulting fee
2 of \$300,000 a year from Southern?

3 A. I don't know. I don't know if that's a
4 required disclosure. If it was, I'm sure we did.

5 Q. Let's go to a new exhibit. We will mark
6 this one 95.

7 (The document referred to was thereupon
8 marked Plaintiff's Exhibit 95 for Identification, a
9 copy of which is not attached hereto.)

10 BY MR. BROOK:

11 Q. Do you recognize this document that's
12 been marked as Exhibit 95? I will just note for the
13 record it bears Bates numbers EB644 through 652.

14 A. I don't remember seeing this.

15 Q. Do you see it appears to be a restrictive
16 covenant entered into on the 30th day of November
17 2007 between Lester Eber and Southern Wine and
18 Spirits of America? Do you see that?

19 A. Yes.

20 Q. You are aware that there is a restrictive
21 covenant contained in the consulting agreement
22 between Lester and Southern, correct?

23 A. Yes.

24 Q. Do you know why there was a separate
25 restrictive covenant executed by Lester Eber in

1 addition to the one that appears in the consulting
2 agreement?

3 A. No.

4 Q. Can you think of any reason why that
5 might have been done?

6 MR. RAMSEY: Form.

7 THE WITNESS: I don't know.

8 BY MR. BROOK:

9 Q. Going back to 2007 after the initial
10 letter of intent regarding the purchase of New York
11 assets, you mentioned that there were discussions and
12 ultimately acquisitions of some of Eber Brothers'
13 interests in other states. Specifically Delaware and
14 Ohio were acquired, correct?

15 A. Correct.

16 Q. And is it correct that there was also at
17 one point at least a preliminary agreement for
18 Southern to acquire a 15 percent stake in Eber
19 Connecticut?

20 A. Yes.

21 Q. What was the reason for that part of the
22 transaction?

23 A. We wanted to -- there was two parts of
24 it. At that point in time, if I remember correctly,
25 we wanted as much security as we could for the monies

1 that were being advanced to get it done and we saw
2 this was an asset that we could secure ourselves and,
3 as I believe I noted before, we had no idea what 15
4 percent of Connecticut meant. We had done no due
5 diligence. We had done nothing.

6 Connecticut sounds like a nice state. We
7 really took it more as a -- what I will say as a
8 security interest for the deal and if it worked out
9 and made sense, which it didn't really make sense, we
10 would have gone forward.

11 Q. So why did that part of the transaction
12 ultimately not go forward?

13 A. We didn't see it really having a creed of
14 value. We don't really like -- not that we don't
15 like partners. We don't really do well with partners
16 long term and when you're a minority partner it often
17 doesn't work out right and 15 percent -- maybe I
18 could wince at 49 percent or 51 percent, but 15
19 percent is a weak partner, so we -- what we
20 understood, which was limited, we decided it wasn't
21 what we wanted to do.

22 Q. Now, Southern, did it also agree to give
23 a loan to Eber Connecticut at some point or to
24 another Eber entity?

25 A. There were a number of, I will call them

1 advances. There were a number of advances done to
2 what I can describe as keeping the Eber entities
3 themselves afloat while an orderly transaction was
4 being maintained.

5 So one of -- one that I remember clearly
6 was with a trucking company where, you know, as we
7 understood it, we advanced money for this trucking
8 company. I'm not sure if it was a relationship. I
9 think it was called GT or GP Trucking or something
10 like that.

11 Q. General Trucking Company?

12 A. Yes, GT, where we advanced them money so
13 they don't repossess the trucks that would have ended
14 the business.

15 It was -- you know, then we took that
16 advance, which -- we took that advance and we ended
17 up credited against the total purchase.

18 Q. That was \$1.5 million that was advanced
19 early on after the letter of intent; does that sound
20 about right?

21 A. Somewhere in that period of time, yes,
22 sir.

23 Q. Were you made aware of how much Eber
24 Brothers had paid to acquire Slocum & Sons, the
25 Connecticut operation?

1 A. No, not I. I had no idea.

2 Q. So even though it wasn't consummated, at
3 one point there was an agreement of some sort for the
4 acquisition of 15 percent of Eber Connecticut in
5 exchange for \$3 million, correct?

6 A. We had the right or the option -- I'm not
7 sure if there is a difference between the two but we
8 had the right or the option to do Connecticut.

9 I personally, nor my team at that time, I
10 can't recollect doing any due diligence around that
11 transaction. I think us passing on it was more of a
12 did it make sense for us commercially and from
13 suppliers and customers to invest any money there.

14 Q. Are you aware that eventually that 15
15 percent interest was sold to another third party?

16 A. No. No. Again, I don't know whatever
17 happened in Connecticut or Rhode Island.

18 Q. Has Southern done business with Eber
19 Connecticut?

20 A. Not to my knowledge. Possibly wholesaler
21 to wholesaler if we have common suppliers but that's
22 100 percent speculation. It would all be normal
23 business if we did. I have no idea.

24 Q. Do you know whether Eber Connecticut has
25 imported wines that were then sold into the New York

1 metro area through Southern?

2 A. That would be a bad thing.

3 Q. Why? Why do you say that?

4 A. Because it's one of the things that
5 protects our industry, is that, you know, you are
6 giving distribution rights for a particular area.

7 It's one of the biggest things that we
8 try to do, so it would be undermining the
9 distribution rights. Now, if they sell items that I
10 don't represent, that could be my competitor's
11 business. You know, first of all, if it was legal
12 it's one thing and number two, you know, if I knew he
13 was selling my products that I have distribution
14 rights for and traditionally contracted with the
15 supplier I would not take it lying down. I would go
16 tell the supplier.

17 Q. Do you know who David Eber is?

18 A. Yes.

19 Q. Who is David Eber?

20 A. No. Excuse me, I don't know David Eber.

21 No, I thought you were going to say David Taub.

22 Excuse me, I take that back.

23 Q. So you don't know Lester Eber's son
24 David?

25 A. No, I've never met David.

1 Q. Do you know whether he was at some point
2 a Southern employee?

3 A. No, I have no idea. I have no idea. We
4 have 22,000 employees.

5 Q. So you don't know whether there were ever
6 discussions between David Eber and his father or
7 sister about having a business relationship between
8 Southern and some of the continuing Eber Brothers
9 entities?

10 MR. RAMSEY: Form.

11 THE WITNESS: Absolutely not.

12 BY MR. BROOK:

13 Q. If Lester as part of the consulting
14 agreement had told you that he would agree to all the
15 terms, but the money should be paid to another Eber
16 Brothers entity rather than to him personally, would
17 that have effected your willingness to enter into the
18 agreement?

19 MR. RAMSEY: Form.

20 THE WITNESS: The answer is, you know,
21 subject to whatever my attorneys might have
22 said, I would have objected vehemently.

23 From what I was told these are personal
24 services sort of agreements that Lester -- at
25 the end of the day we viewed Lester having the

1 value, not the older entity after they ceased --
2 after they ceased to exist, so I would have been
3 a very -- I would think most of the people in my
4 executive team would have been the same way.
5 The answer is no. If that question was posed,
6 it's speculative, but I would answer it that
7 way.

8 BY MR. BROOK:

9 Q. What if the contract included a personal
10 services guarantee that the contract would only
11 continue so long as Lester Eber was able to provide
12 the services that were being contracted for?

13 MR. RAMSEY: Form.

14 THE WITNESS: Again, I would go to my
15 attorneys and say is this going to accomplish
16 what I want or not.

17 BY MR. BROOK:

18 Q. Let me ask you this way. As long as it
19 accomplished what you described that you wanted did
20 you care who ultimately got the money, as long as you
21 got what you wanted from Lester?

22 MR. RAMSEY: Form.

23 THE WITNESS: Call me myopic if you want,
24 after a business is done, it's done. We deal
25 with the individual.

1 It's kind of historically what we have
2 done and what we have known. When you work
3 through the halls of Albany they don't say hey,
4 mister, you know, Eber acquisitions. It's kind
5 of like a personal thing.

6 We haven't given that up yet. I can't
7 answer your questions if because, you know, I'm
8 not an attorney. I'm the guy who has to run the
9 business and been basically taken advantage of
10 many times. This gray hair didn't come here
11 just naturally, so I know who I do business
12 with.

13 BY MR. BROOK:

14 Q. You said when business is done it's done
15 but as I mentioned before, and we have discussed, you
16 haven't had another situation where a consultant like
17 Lester for Southern has continued to operate a
18 business in some manner at the same time as he was
19 consulting with Southern, correct?

20 A. To my recollection I never had a business
21 that competed with us in our same trading area. I
22 don't know if we have ever had a successor consultant
23 who might have been in the industry doing something
24 unrelated to us. I can't remember that. But within
25 our trading area, I really can't think of one.

1 Q. Do you know whether Eber Brothers Wine
2 and Liquor Corporation continued to exist long after
3 it sold off its inventory and stopped as an operating
4 business?

5 A. I have no idea what they have done
6 organizationally.

7 Q. What was your understanding as to who the
8 owners were of Eber Brothers Wine and Liquor Corp.?

9 A. I have no idea.

10 Q. Were you aware that Lester was a trustee
11 of a trust that owned the Eber Brothers Wine and
12 Liquor Corp.?

13 A. No.

14 Q. Were you made aware of that as part of
15 your preparation for the testimony today?

16 A. No.

17 Q. You were aware that Eber Brothers Wine
18 and Liquor Corp. had pension liabilities, correct?

19 A. We didn't -- we traditionally did not
20 assume pension liabilities. That's the black hole of
21 assumption.

22 In the acquisitions that we have done in
23 the past -- I'm being specific. In multiple
24 acquisitions we have done to assume a pension
25 liability is very few and far between, especially in

1 certain states, like New York, where some of the
2 pension liabilities could be very big.

3 Unless we can define them. Unless we can
4 really define them.

5 Q. Do you know what happened in terms of
6 Eber Brothers' ability to pay its pension
7 liabilities?

8 A. No. No.

9 Q. Was Southern at some point in time in
10 2012 made a party to a civil action in New York
11 Supreme Court in connection with the transfer of
12 assets belonging to Eber Brothers Wine and Liquor
13 Corp.?

14 A. In 2012?

15 Q. Yes.

16 A. The only -- the only real action that I
17 remember was when we were sued by Eber, Lester, the
18 company for, I think your word was poaching. My word
19 was more taking the employees coming to us. That's
20 the only action that I really remember.

21 Q. So were you aware that at some point
22 Lester Eber had foreclosed on certain assets that
23 belonged to Eber Brothers Wine and Liquor Corp. and
24 had been required to name Southern as a party to that
25 action?

1 MR. RAMSEY: Form.

2 THE WITNESS: I think that's why we're
3 here today. So to restate my answer, I have had
4 nothing to do with this case, other than up to
5 in preparation for today.

6 So I don't know any of the real basis of
7 the case or whatever else.

8 BY MR. BROOK:

9 Q. Well, so it's fair to say that in
10 preparation for today's testimony you did not become
11 aware of anyone who dealt with the 2012 foreclosure
12 action at the time on behalf of Southern?

13 A. I think that states it correctly.

14 Q. When you were negotiating the consulting
15 agreement were you made aware of what Lester Eber's
16 salary was that he was receiving from Eber Brothers
17 at the time?

18 A. I have no recollection, no.

19 Q. Do you know whether his salary was, you
20 know, in the same ballpark as \$600,000 a year?

21 MR. RAMSEY: Form.

22 THE WITNESS: I think I answered, I had
23 no idea. In privately held companies it's not
24 only salary but it's distributions and
25 everything else. It's a whole gamut of

1 compensation. It wasn't in my reconciliation
2 when we were trying to value it.

3 MR. BROOK: Why don't we take a break
4 now. I'm going to see if I can narrow this
5 down.

6 (Thereupon a brief recess was taken,
7 after which the following proceedings were had.)

8 MR. BROOK: We will do one more exhibit.
9 We will mark this one as 96.

10 (The document referred to was thereupon
11 marked Plaintiff's Exhibit 96 for Identification, a
12 copy of which is not attached hereto.)

13 BY MR. BROOK:

14 Q. This is bearing Bates numbers EB688
15 through 691. It is a letter on Harris Beach
16 letterhead dated November 30, 2007, addressed to
17 Southern Wine & Spirits. Do you recognize this
18 document?

19 A. No, I don't.

20 Q. Do you know why Harris Beach was
21 providing a letter to Southern when they were
22 representing the Eber Brothers companies?

23 A. I would only be assuming that they -- can
24 you give me a minute to take a look at it?

25 Q. Sure.

1 A. Okay.

2 Q. Have you had a chance to review it?

3 A. Briefly, yes.

4 Q. So do you know why this was --

5 A. It seems to be a standard opinion letter
6 by seller's counsel as to the opinion of the
7 contemplated transaction, covering a wide range of
8 areas about power, going into sales duties and rights
9 and the abilities to enter this transaction.

10 Q. So you say a standard letter. Is this
11 something that typically is requested by Southern in
12 these transactions?

13 A. In every closing I have been involved in
14 both attorneys, both seller and buyer, require an
15 opinion letter of their counsel as the ability to
16 enter into a transaction.

17 Q. So it says here on the first page that
18 they reviewed four documents in order to enter
19 into -- in order to render the opinions set forth
20 herein. Do you see that?

21 A. Yes.

22 Q. Do you know why the consulting agreement
23 was not one of the documents that was considered as
24 part of this opinion letter?

25 MR. RAMSEY: Form.

1 THE WITNESS: I can't answer that.

2 BY MR. BROOK:

3 Q. Do you know whether an opinion letter was
4 sought from Harris Beach as to the consulting
5 agreement?

6 A. I can't answer that, no.

7 Q. When you say you can't answer that, you
8 don't know?

9 A. I don't know. I don't know.

10 Q. Okay. Have you discussed this deposition
11 with anyone other than your attorneys and the three
12 individuals in the company that you named earlier?

13 A. No.

14 Q. Have you discussed this deposition with
15 Lester Eber?

16 A. No.

17 Q. Do you know whether your lawyers have
18 spoken with lawyers for Lester Eber?

19 MR. ACKERMAN: I'm going to ask you not
20 to divulge the content of any communication
21 between your lawyers and you.

22 THE WITNESS: I have no idea about the
23 communications between the attorneys.

24 BY MR. BROOK:

25 Q. Do you know whether the substance of what

1 your anticipated testimony here today was going to be
2 was communicated to Lester Eber or his lawyers in
3 advance?

4 MR. ACKERMAN: Same instruction.

5 THE WITNESS: I have no idea what the
6 attorneys discussed.

7 MR. BROOK: I have no further questions.

8 MR. RAMSEY: I'm not going to be long at
9 all. I just want to talk to Lester for five
10 minutes.

11 MR. BROOK: Sure.

12 (Thereupon a brief recess was taken,
13 after which the following proceedings were had.)

14 CROSS EXAMINATION

15 BY MR. RAMSEY:

16 Q. Good morning, Mr. Hager. We met off the
17 record. My name is Colin Ramsey and I represent the
18 Eber entities in this lawsuit.

19 I just have a couple of follow-up
20 questions. Same rules apply that Mr. Brook gave
21 you. If you don't understand a question, don't hear
22 it, I will be happy to repeat it. Fair enough?

23 A. Yes.

24 Q. If I could have you turn your attention
25 to what was previously shown to you as Exhibit 27,

1 the consulting agreement that Lester Eber entered
2 into with Southern. Just let me know when you're
3 there.

4 A. Yes.

5 Q. Can you turn to the last page of Exhibit
6 27, specifically paragraph 22. I'll just read it
7 into the record. It's short.

8 It's entitled: "Entire Agreement. This
9 agreement contains the entire agreement of the
10 parties relating to consultant's relationship with
11 the company for the term." Do you see that?

12 A. Yes.

13 Q. Do you understand what was intended by
14 that paragraph?

15 A. I signed it.

16 Q. Okay. What's your understanding of what
17 paragraph 22 means?

18 A. There is nothing -- there is nothing else
19 that Lester is bound to or I am bound to, other than
20 what's in this document.

21 Q. In other words, fair to say that there is
22 not a side deal of any kind that Lester and Southern
23 entered into that would be in addition in any way to
24 Exhibit 27?

25 A. No.

1 Q. You were asked a number of questions
2 about whether the consulting agreement, the
3 compensation arrangement with Lester Eber was similar
4 or typical as other consulting agreements that
5 Southern entered into.

6 Do you recall that line of questions?

7 A. Yes.

8 Q. I believe, if I can summarize your
9 testimony was yeah, this is typical practice with
10 Southern; is that fair?

11 A. The methodology is typical. The value
12 could change. Here we had a -- you know, what we
13 thought was a high value, high use, high whatever, so
14 the methodology is the same.

15 Q. If I understood what -- you anticipated
16 my next question. The particular compensation
17 structure or compensation arrangement with the
18 consultant would depend on what value Southern
19 believed could be derived from utilizing that
20 consultant; is that fair?

21 A. I believe I explained that's exactly the
22 thought process that I personally go through.

23 Q. And just to put a bow on it, that's how
24 Southern and Lester ultimately arrived at the
25 compensation arrangement that was agreed upon back in

1 2007?

2 A. Yes.

3 Q. Did I understand the entirety of your
4 deposition testimony, at least with respect to the
5 consulting services that Lester has provided, to be
6 that Southern has been happy with the services that
7 Lester has provided pursuant to the consulting
8 agreement?

9 A. We believe we have gotten our fair
10 bargain.

11 Q. To the extent Southern at any time did
12 not believe they were getting what they paid for
13 there would have been a mechanism whereby they could
14 end that relationship with Lester Eber, correct?

15 A. We, in fact, did change the relationship
16 from the initial agreement that went out and, again,
17 we narrowed the responsibilities and we adjusted the
18 consulting fees.

19 Q. Certainly. And you testified to that and
20 to the extent you thought that you weren't getting
21 the benefit of the bargain whether under the original
22 terms or the renegotiated terms with Lester, Southern
23 could avail themselves of a mechanism to end that
24 relationship, correct?

25 A. I would have ended it.

1 Q. You were asked a number of questions
2 about reimbursements that Lester submitted and was
3 ultimately paid. Do you recall that?

4 A. Yes.

5 Q. Was there ever any concern on the part of
6 Southern that Lester was in any way abusing the
7 reimbursement process?

8 A. Not that I can recall.

9 Q. You were asked by Mr. Brook whether you
10 were aware of the ownership structure of the various
11 Eber entities and whether or not you were aware of an
12 Allen Eber will or an Allen Eber trust, and I believe
13 your answer was you weren't aware of either?

14 A. Correct.

15 Q. Probably I know the answer to this
16 question, but let me ask it anyway. Did you ever
17 have any discussions with Lester Eber about this
18 trust?

19 A. Never.

20 Q. Any discussion with Lester Eber about
21 arranging his compensation structure to somehow do an
22 end-around the trust?

23 A. Never.

24 Q. Do you know an individual named Dan
25 Kleeberg?

1 A. No.

2 Q. I will represent to you that Mr. Kleeberg
3 is one of the plaintiffs in this action and is a
4 former employee of Eber Brothers. Does that refresh
5 your recollection of anything?

6 A. You asked if I know him and no, I don't
7 know him. Did I recognize the name? I have seen the
8 name, but I have no idea of the association --

9 Q. So I am assuming then --

10 A. -- or employee or not.

11 Q. -- you don't recall any conversations that
12 you would have had with Mr. Kleeberg?

13 A. Never.

14 Q. Any recollection of any conversations you
15 had with the two other plaintiffs, Audrey Hays or
16 Lisa Stein?

17 A. I have no recollection of ever talking to
18 them.

19 MR. RAMSEY: That's all I have. Thank
20 you.

21 REDIRECT EXAMINATION

22 BY MR. BROOK:

23 Q. I have one follow-up question.

24 A. Okay.

25 Q. You mentioned narrowing the

1 responsibilities. How were Lester Eber's
2 responsibilities narrowed?

3 A. They went from the initial agreement,
4 where I described as being very wide, which was --
5 maybe I didn't explain it well enough.

6 Very wide, where they were operational,
7 location, logistics. In the beginning of the
8 relationship we had no idea who even the key
9 customers were.

10 We had a fairly good idea of the
11 suppliers. We had no idea of the trading practices
12 up there because they were individual upstate trading
13 practices, different than metro. In addition, in the
14 wide spectrum there was the -- you know, the
15 regulatory, the SLA, you know, the government
16 representation.

17 That's how it was really widened. We
18 then narrowed it. When I say we narrowed it, we cut
19 off a lot of those buckets since we had built some
20 muscle and we understood how to do business up there
21 and we're now focusing Lester on the narrow thing of
22 government affairs.

23 I discussed policy -- governmental policy
24 with alcoholic beverage I think is very, very
25 important for our future and the whole idea of the

1 SLA regulation. But it's much deeper now, you know.
2 So we went from wide, with a lot of topics, going
3 from deep to now narrow, but really, really pretty
4 deep in those things and thrusting him into
5 everything that comes our way and holding him
6 accountable for letting us know what's happening in
7 the terms of the bill that might be coming or some
8 legislator who might have some temperance movement
9 that wouldn't be good for our business.

10 Q. Has the amount of time that Lester has
11 spent consulting decreased as a result of the
12 narrowing of his responsibilities?

13 A. I would say probably it's gotten more
14 because it went a lot deeper on more complex things.
15 I think the certainty of what I think the work is
16 might vary, but I think the topics that come through,
17 when you have a law coming out that can affect your
18 industry or affect your business or your operation,
19 you know, that's deep.

20 You're going to go very, very deep. It
21 could be weeks of lobbying or discussing or
22 politicking or whatever else. I think it's probably
23 equivalent but, you know.

24 Q. But the amount of money he's being paid
25 has been decreased?

1 A. Exactly. Exactly. Why?

2 Q. Yeah, why?

3 A. Why? Because it gets back to the
4 muscle -- you know, the muscle that we built. Like,
5 for instance, in metro New York we brought in this
6 young kid. Adam Hasson is it? Or something like
7 that. Is it Adam Hasson?

8 Because we were getting so many SLA
9 violations. So Lester, a few years ago we had him
10 kind of oversee Adam to bring him along, an attorney
11 himself that we brought in-house to deal with the SLA
12 issues.

13 So we kind of like -- we took that and we
14 were transferring knowledge from Lester to now
15 somebody who is dealing with it. Will his
16 responsibilities grow into upstate New York one day?
17 I think we started a little bit, you know, but that's
18 how I describe it.

19 Q. I apologize, as I mentioned on the
20 record, I'm a little off today. Who threw out the
21 first number when you were initially negotiating
22 Lester's consulting fee in 2007?

23 MR. RAMSEY: Form.

24 THE WITNESS: I think -- I don't really
25 remember who threw out the first number. I

1 don't really remember.

2 BY MR. BROOK:

3 Q. Do you remember what Lester's largest
4 demand was?

5 A. No. No.

6 Q. Do you remember what Southern's smallest
7 offer was?

8 A. No. But, you know, again, I thought we
9 did pretty well in that first round.

10 Q. Were those negotiations carried out at
11 the same time as the negotiations for the other price
12 terms for the purchase agreements that were entered
13 into?

14 A. I would like to say it and I think, as I
15 said, I think we always envisioned it being a
16 consulting agreement. The thrust of everything that
17 we were doing in those early deal days I will say was
18 business survival and figuring out workouts so his
19 business did not implode and we would be picking up
20 pieces. We always kind of knew there would be a
21 consulting. That was not the focus of us.

22 Q. Just trying to get the timing. Those
23 were discussed at the same time, it wasn't like you
24 had a separate meeting to discuss the consulting
25 agreement; is that right?

1 MR. RAMSEY: Form.

2 THE WITNESS: If I recollect, the
3 consulting agreement was finalized when we knew
4 we had a deal and we had the structure of the
5 deal that -- you know, I can't tell you -- I
6 don't remember if it came up in the deal
7 discussions, but what I can tell you is it was
8 always our intention to enter, hopefully entice
9 him to also stay there.

10 BY MR. BROOK:

11 Q. Did you consider the negotiation of the
12 consulting agreement to be something that was
13 separate from the rest of the deal that you were
14 negotiating or was it part of the overall deal you
15 were looking for?

16 MR. RAMSEY: Form.

17 THE WITNESS: By design we had to get the
18 deal done to make the business survive,
19 otherwise there would be no consulting agreement
20 and I think Lester realized that.

21 There would be nothing to consult with
22 unless there was some sort of deal done. It
23 wasn't the primary focus. It surely wasn't the
24 primary focus on what we were doing. We were
25 building a company.

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1 MR. BROOK: Thank you. Nothing further.

2 MR. ACKERMAN: Anything else or is the
3 deposition concluded?

4 MR. RAMSEY: No questions here.

5 MR. ACKERMAN: Thank you.

6 (Thereupon the taking of the deposition
7 was concluded.)

8

9 _____
LEE HAGER

10

11 Subscribed and sworn to before me

12 this ____ day of _____, 2019.

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15 _____
NOTARY PUBLIC

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CERTIFICATE OF OATH

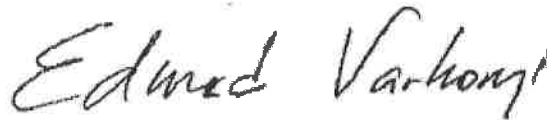
STATE OF FLORIDA:

SS:

COUNTY OF DADE:

I, the undersigned authority, certify that
LEE HAGER personally appeared before me and was duly
sworn.

WITNESS my hand and official seal this 20th
day of May 2019.



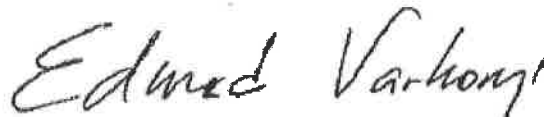
Notary Public, State of Florida at
Large; my commission expires
February 26, 2023. Bonded through
Troy Fain Insurance, Inc.

CERTIFICATE OF REGISTERED PROFESSIONAL REPORTER

I, EDWARD VARKONYI, and Registered Professional Reporter and a Notary Public for the State of Florida at Large, do hereby certify that I reported the deposition of LEE HAGER; that the foregoing pages, numbered from 1 to 89, inclusive, constitute a true and correct transcription of my shorthand report of the deposition by said witness on this date.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

WITNESS my hand and official seal in the City of Miami, County of Dade, State of Florida, this 20th day of May 2019.



Notary Public, State of Florida at Large; my commission expires February 26, 2023. Bonded through Troy Fain Insurance, Inc.

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